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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,197	04/20/2001	David W. Cannell	05725.0505-00	1548
22852	7590	03/08/2004	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/838,197

Applicant(s)

CANNELL ET AL.

Examiner

Eisa B Elhilo

Art Unit

1751

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on February 5, 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on February 5, 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1-74, 157 and 158.Claim(s) withdrawn from consideration: 75-156, 159 and 160.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Brian P. Munk
BRIAN P. MUNK
PRIMARY EXAMINER
TECH CENTER 1700

Art Unit: 1751

Continuation of 5. does NOT place the application in condition for allowance because:

Applicant has not presented any additional data showing to overcome the rejection of record.

The arguments presented on February 5, 2004 merely rehash the arguments presented earlier

which is fully responded by the examiner in the previous office action in paper No. 10, dated

8/6/2003. Although the applicant submitted pages from "Milady's Hair Structure and Chemistry

Simplified," pp. 191-192 which define the differences between chemical relaxers and

lanthionization, The applicant has not show in record the criticality of the high pH of the claimed

composition over the compositions of the prior art of record when the instant composition of the

invention is applied to the hair. Further, the higher ranges of the pH's have not recited in any of

the instant claims. Therefore, the rejections of record are proper and maintained.

The proposed amendment to claim 36 will be entered for purpose of Appeal and the amended claim is rejected as well for the reasons set forth in the pervious office action in paper No 8, dated on February 6, 2003.